



Legislative Bulletin.....October 7, 2005

Contents:

H.R. 3893—Gasoline for America’s Security (GAS) Act

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: At least 12

Total Cost of Discretionary Authorizations: \$621 million over five years

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$3 billion over ten years

Total New State & Local Government Mandates: 2

Total New Private Sector Mandates: 2

Number of Bills Without Committee Reports: 0 (forthcoming but not yet available)

Number of Reported Bills that Don’t Cite Specific Clauses of Constitutional Authority: 0

H.R. 3893—Gasoline for America’s Security (GAS) Act (Barton)

Order of Business: The bill is scheduled to be considered on Friday, October 7th, subject to a structured rule. Summaries of the amendments made in order under the rule will be provided in a separate RSC document.

Summary Highlights by Title:

[Title I—Increasing Refinery Capacity](#)

- Creates a new federally-directed implementation process for the siting, construction, expansion, and operation of refineries, available to states whose governors request federal assistance (technical, legal, or other).

- Directs the President (within 90 days of this bill's enactment) to designate sites on federal lands, including no less than three closed military installations, that are appropriate for siting a refinery, based on market supply, geographical diversity, and other needs.
- Requires that the federal government lease such sites only for refinery construction.
- Prohibits refinery designation on lands within the National Park System, within the National Wilderness Preservation System, or designated as a National Monument.
- Allows governors to object to (and therefore block) a siting under this legislation, yet also allows Congress to override such objections by law within 60 days.
- Provides for expedited judicial review, exclusively in the U.S. Court of Appeals for the District of Columbia, of any civil action related to a refinery authorization.
- Directs the federal government to pay for "reasonable attorney's fees and other expenses of litigation" for the prevailing party in any action challenging a federal refinery authorization that has been granted (not in one that has been denied or not yet acted on).
- Repeals the section of the Energy Policy Act (Public Law 109-58) that allows the Environmental Protection Agency (EPA) to enter into refinery permitting cooperative agreements with states for streamlining the consideration of federal and state environmental permits for a new refinery.
- Allows the Department of Energy to enter into contracts with non-federal entities who are building or refurbishing refineries to compensate them for operational delays caused by certain litigation or regulatory situations that were unforeseen.
- Authorizes "such sums as are necessary" to create a Standby Refinery Support Account in the U.S. Treasury Department to pay such compensation. Allows for this account to collect fees from refinery sponsors.
- Allows the President to authorize the siting and construction of a refinery for use by the U.S. military (though the refinery operations would be handled—on a lease basis—by the private sector). The petroleum outputs would have to be sold to the U.S. Government at fair market value or below.
- Directs the EPA to do a complete review and reform of the New Source Review program under the Clean Air Act. [The Energy & Commerce Committee describes this program as, "a preconstruction permitting program that requires state of the art pollution-control technology among other requirements when new sources are constructed or the modification of an existing source results in an emissions increase over permitted limits."]

- Directs the EPA to use the “maximum legal flexibility available under existing law” to enable participants in the energy sector, including refineries, electric power generation stations, and compressor stations, to maintain, restore, and improve the availability, efficiency, and reliability of these facilities.
- Authorizes the President to temporarily waive federal or state controls or prohibitions regarding the use of a fuel or fuel additive, “for the purpose of alleviating an extreme and unusual fuel or fuel additive supply emergency resulting from a natural disaster,” and for not longer than 90 days.
- Shields states from being harmed under the Clean Air Act by any emissions increase attributable to an emergency fuel waiver.
- Requires the EPA to identify a total of **six** gasoline and diesel fuels for a “Federal Fuels List” aimed at reducing ozone emissions. The current list contains 17 blends, which, according to the Energy & Commerce Committee, make it more likely that excess fuel from one part of the country is unusable in another part of the country that might be experiencing a shortage.
- Requires the suspension of the Federal Fuels List if the EPA or the Energy Department finds that the List would reduce fuel availability or distribution.
- Requires that state implementation plans under the Clean Air Act would have to include fuels only from the List (by the end of calendar-year 2008).
- Allows a locality to apply for a date-certain extension of certain clean air requirements when it can be demonstrated that downwind pollution from another area is to blame (“downwind ozone nonattainment”). The EPA would have to approve this locality’s plan for attainment, subject to certain requirements.
- Directs the Secretary of the Interior to charge a price discounted by up to \$4.50 per barrel in any sale to a qualified small refinery of crude oil obtained by the U.S. as royalty-in-kind. [See the “Cost to Taxpayers” section below.]
- Allows the Energy Department to use the biomass debris from a declared major disaster as fuel, subject to certain emission limits, yet without regard to any new source review requirements under the Clean Air Act.
- Notes that no new crude oil refinery has been constructed in the United States since 1976, and there are now 148 operating refineries in the U.S., down from 324 in 1981.

[Title II—Increasing Delivery Infrastructure](#)

- Establishes a new federally-directed implementation process for siting crude and petroleum product pipelines (coordinated by the Federal Energy Regulatory Commission—FERC).
- Provides for expedited judicial review, exclusively in the U.S. Court of Appeals for the District of Columbia, of any civil action related to a pipeline authorization.
- Directs the federal government to pay for “reasonable attorney’s fees and other expenses of litigation” for the prevailing party in any action challenging a federal pipeline authorization that has been granted (not in one that has been denied or not yet acted on).
- Sunsets loan guarantees for the Alaska Natural Gas Pipeline, if the State of Alaska has not entered into an agreement to deliver North Slope natural gas to markets via the proposed natural gas pipelines within two years of the enactment of this legislation.
- Authorizes \$850,000 for fiscal year 2006 for the Secretary of Energy to make a single grant to a qualified institution to design and fabricate a five-kilowatt prototype coal-based fuel cell with listed performance objectives.

Title III—Conservation and Education

- Directs the Secretary of Energy to establish a new grant program (to state and local governments) to encourage the use of carpooling and vanpooling to reduce the consumption of gasoline. The federal share of any project could not exceed 50%.
- Instructs the Secretary, as part of the above carpooling program, to evaluate the capacity of the Internet to facilitate carpool and vanpool operations (and report its findings to Congress)
- Requires the EPA to evaluate the carpool and vanpool projects funded under the Congestion Mitigation and Air Quality program to reduce consumption of gasoline (and report its findings to Congress).
- Authorizes \$2.5 million for the Secretary of Energy to enter into a partnership with interested industry groups to create a multimedia, public education campaign about measures that drivers can take to conserve gasoline. The federal share of the campaign could not exceed 50%.
- Directs federal agencies to procure the most energy efficient and cost-effective light bulbs or other electrical lighting products, consistent with safety considerations.
- Authorizes \$10 million for the Secretary of Energy to establish a program to encourage “minority” students to study earth sciences and enter the field of geology (for future employment in the oil, gas, and mineral industries).

Title IV—Gasoline Price Reform

- Makes it a violation of federal law to price-gouge for gasoline or diesel fuel during a 30-day period and in an area of a major disaster, subject to a civil penalty of not more than \$11,000 per person per day in which a violation occurs. State law does not appear to be affected.
- Directs the Federal Trade Commission (FTC) to promulgate a definition of “price gouging” and other necessary regulations within one year of this legislation’s enactment.
- Directs the FTC to investigate nationwide gas prices in the aftermath of Hurricane Katrina, with a particular focus on price-gouging by companies with more than \$500 million in gas and petroleum distillates sales in 2004 and with multiple complaints against them. The investigation would also have to study the effects of increased gas prices on the U.S. economy. Instructs the FTC to consider cost increases in September 2005 as price gouging if such increases cannot be shown to be attributable to production, transportation, delivery, or sale of gas in that area or to national or international market trends.
- Requires that the FTC report its findings from the above investigation to Congress, the appropriate federal agencies (in the case of criminal misconduct discovered), and to the appropriate state agencies.
- Instructs the FTC to report to Congress on the price of refined petroleum products on the New York Mercantile Exchange and the effects of such price on trading.

Title V—Strategic Petroleum Reserve

- Authorizes the creation of a Strategic Petroleum Reserve Expansion Fund to fund the acquisition of increased capacity for the Reserve (accomplished through the drawdown and sale of petroleum products from the Reserve).
- Conditions the sale of crude oil from the Strategic Petroleum Reserve on contractual obligations to refine such crude (before sale) for consumption in the United States.
- Increases the maximum allowable capacity of the Northeast Home Heating Oil Reserve from two million to five million barrels of petroleum distillate.

Title VI—Commission for the Deployment of the Hydrogen Economy

- Establishes an eight-member Commission for the Deployment of the Hydrogen Economy to develop a strategic plan across government and non-government entities to achieve the mass commercialization of hydrogen for fuel cells. The Commission would have subpoena power and other usual powers of similar commissions.

[Title VII—Critical Energy Assurance](#)

- Directs the Secretary of Energy to report to Congress on the Secretary’s review of the fuel supply plan components of state and National Capitol Region evacuation plans.
- Establishes the Critical Energy Assurance Account so that the Energy Secretary could provide direct assistance to private sector entities that operate critical energy infrastructure, including refineries, during any federally declared emergency or disaster.

Committee Action: On September 26, 2005, the bill was referred to the following committees: Energy & Commerce, Transportation & Infrastructure, Armed Services, and Resources. On September 28, 2005 the Energy & Commerce Committee marked up and ordered the bill favorably reported to the full House by voice vote.

Possible Conservative Concerns: Some conservatives might be concerned about the several new programs and federal mandates in the bill. Additionally, some entities, such as *The Wall Street Journal* and the Cato Institute, have described anti-price-gouging efforts as federal interference in free-market pricing.

Cost to Taxpayers: CBO estimates that the bill would authorize \$38 million in FY2006 and a total of \$621 million over the FY2006-FY2010 period. The majority of these authorizations are for the siting and construction of a refinery for use by the U.S. military.

CBO also estimates that H.R. 3893 would increase mandatory spending by \$300 million each year over the next ten years (for a total of \$1.5 billion over the FY2006-FY2010 period and \$3 billion over the FY2006-FY2015 period). These increases in mandatory spending are the result of the loss of offsetting receipts from the provision directing the Secretary of the Interior to charge a discounted price in any sale to a qualified small refinery of crude oil obtained by the U.S. as royalty-in-kind. **NOTE:** The House Budget Committee indicated that, because of this provision, H.R. 3893, as reported, **would violate the budget resolution** by about \$3 billion over ten years (the cost of the small refinery provision). A manager’s amendment (to be summarized in a separate document) is expected to include language switching the budget-busting spending from mandatory to discretionary and thus avoid a budget resolution violation.

H.R. 3893 could affect revenues, but CBO estimates that any effect “would not be significant.”

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill would expand the federal government’s role in refinery siting and in “price gouging” and would create at least 12 new programs.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. The bill would impose two intergovernmental mandates: 1) preempting states’ fuel, fuel-additive, and clean-air laws, and 2) preempting states’ ability to

authorize refinery sitings. The bill would also impose at least two private-sector mandates: 1) effectively requiring any refinery currently producing a fuel blend that is not on the federal fuels list to cease production of that fuel, and 2) requiring all gas service providers to submit to the Federal Energy Regulatory Commission annual reports regarding the conditions of service for each shipper served.

CBO reports that all mandates would not yield significant costs to the affected parties.

Constitutional Authority: A committee report citing constitutional authority is forthcoming but was not available at press time.

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